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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
WESTERN PROCESSING COMPANY,
INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 81-99

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a notice of violation and a notice and order of civil penalty (\$250) for alleged failure to file a "Notice of Construction and Application for Approval" for an alleged new air contaminant source at a plant facility at Kent, Washington, came on before the Board at Seattle, Washington, on January 27, 1982. Seated for and as the Board were Nat W. Washington, Chairman, and Gayle Rothrock (presiding). Reporter Jeannette Hanson Hughes recorded the proceedings. Respondents elected a formal hearing in accordance with RCW 43.21B.230.

1 Appellants were represented by attorney Peter Danelo, and
2 respondent was represented by its attorney, Keith D. McGoffin.

3 Witnesses were sworn and testified. Exhibits were examined. From
4 the testimony heard, the exhibits examined, and the contentions of the
5 parties considered, the Pollution Control Hearings Board makes these

6 FINDINGS OF FACT

7 I

8 Appellant, Western Processing Company, Inc., a waste chemical
9 handling company, operates a plant for the regeneration of certain
10 products into new useable products as part of its environmental
11 hygiene business at South 196th in Kent. Part of the plant equipment
12 processes waste solvent through a distillation/condensation (change of
13 chemical state) action. This separates boiled waste solvent into
14 waste sludge and vaporized solvent. The solvent is then water-cooled
15 and liquified in a water jacket condenser; regenerated to a useable
16 solvent fluid. The liquid solvent is then transfer-pumped to a series
17 of small (less than 4000 gallon capacity) storage tanks.

18 Whether and under what circumstances vaporized solvent is emitted
19 to the air during this process is a major point of dispute between
20 appellant and respondent. The size, names, and power capabilities of
21 burning and condensing equipment is also a part of this scientific and
22 business practices dispute.

23 II

24 Two employees of respondent agency arrived at appellant's place of
25 business on April 15, 1981, to routinely review and inspect plant
26 operations and ascertain that all volatile organic compounds there

1 were being properly controlled. While respondent's agents were having
2 appellants complete emissions inventory forms, they noticed the
3 installation of a new (second) "distillation column" for waste
4 solvents processing alongside a rendering-style boiler.

5 Assuming there was a gas venting mechanism on the
6 distillation/condensation device (constituting an emissions source),
7 respondent's agent researched the records to learn whether a "Notice
8 of Construction and Application for Approval" had been entered by
9 Western Processing Company, Inc. Finding none on record, respondent
10 sent a Notice of Violation and wrote appellant about the matter on
11 April 28, 1981, and enclosed forms of notice and application to be
12 filed with Puget Sound Air Pollution Control Agency.

13 Appellant, through its president Lurrt Nieuwenhuis, contacted
14 Puget Sound Air Pollution Control Agency by letter twice during the
15 ensuing six weeks objecting to the characterization of the
16 distillation/condensation device as an air contaminant source and
17 proposing that parts or all of the waste solvent regenerating system
18 were, in fact, exempt under PSAPCA regulations. On behalf of
19 respondent PSAPCA, air pollution engineer James Nolan, wrote appellant
20 indicating the subject waste solvent system did constitute an air
21 contaminant source and is not exempt under PSAPCA Regulations, Section
22 5.03, Exhibit A. Three days later respondent issued a Notice and
23 Order of Civil Penalty for appellant's failure to file a "Notice of
24 Construction and Application for Approval" for the distillation/
25 condensation device. From this, appellant Western Processing Company,
26 Inc., appeals.

1 III

2 The steam boiler, which runs heat transfer oil, is a rotary cup
3 atomizer burner of a modest size, but with its nameplate (which
4 includes horsepower information) missing. Appellant judges the
5 horsepower of this unit to be certainly no greater than 50, based on
6 its performance and physical size. By the same criteria, the energy
7 used does not even approach one million BTU's per hour.

8 IV

9 Respondent agency did not present evidence that there was, in
10 fact, a vent from which air contaminants could escape into the
11 atmosphere. Respondent, instead, assumed from the nature of the
12 operation there must be such an air vent. However, appellant's
13 distillation tank and condenser column for handling waste solvent is a
14 closed system and does not, from the evidence presented, vent gas to
15 the atmosphere during operation. Rather, the system cools vaporized
16 solvent forcing it downward, transfer-pumping it at approximately
17 50° in liquid form through a hose into the bottom of small storage
18 tanks; which tanks have small topside vents which release air as the
19 liquid solvent fills up the tank from the bottom. The tanks are "room
20 temperature"--not as hot as the boiling point for chemical solvents.¹

21 V

22 Any Conclusion of Law which is deemed to be a Finding of Fact is
23 hereby adopted as such.

24 From these Findings of Facts, the Board comes to these

25
26 1. The boiling point is between 150° and 250° Fahrenheit,
27 depending on the exact nature of the solvent.

1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over the persons and subject matter of
4 this proceeding. RCW 43.21

5 II

6 Pursuant to RCW 43.21B.260, respondent has filed with this Board a
7 certified copy of its Regulation I and amendments thereto, of which
8 official notice is taken.

9 III

10 No new air contaminant source requiring a Notice of Construction
11 and Application for Approval, under terms of PSAPCA Regulation I,
12 Article 6, has been shown to exist in this case.

13 IV

14 Appellant's steam boiler is exempt from the requirements of
15 Article 6, under the terms of Regulation I, Article 5 "Exhibit A"
16 (5)(ii).

17 V

18 Appellant's solvent storage tanks are exempt from the requirements
19 of Article 6, under terms of Regulation I, Article 5 "Exhibit A"
20 (15)(iii).

21 VI

22 This being an appeal of a civil penalty the burden of proof lies
23 with the respondent, and the respondent failed to sustain its burden
24 in this matter.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

VII

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board makes this

ORDER

Respondent's Notice and Order of Civil Penalty (No. 5142) is vacated.

DONE in Lacey, Washington this 25th day of February, 1982.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


GAYLE ROTHROCK, Vice Chairman